

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No. 1333 of 2005

Date of Decision: 16th May, 2007

Randhir Singh

Petitioner

Versus

Union of India and others

Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting¹? Yes.

For the petitioner: Mr.M.C.Verma, Advocate.

For the respondents: Mr.A.K.Rattan, Central
Government Counsel.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

Petitioner herein has prayed for quashing of the memorandum of charges dated 13th March, 2003, inquiry report dated 22nd May, 2003, order dismissing the petitioner from service passed by the disciplinary authority dated 26th July, 2003, order of the appellate authority dated 31st March, 2004 and the

order dated 29th September, 2004 passed by the Revisional authority.

While serving as Constable in the Central Industrial Security Force (CISF), petitioner was charge-sheeted on 13th March, 2003 with the following Articles of Charges:-

"Article-I.

That No.913441158 Constable Randhir Singh, CISF Unit CHEP Stage-II Karian District Chamba (HP) remained absent from his duty at his own will and without permission from 24.2.2003 to 27.2.2003 which act on his part being a member of the disciplined force amounts to grave indiscipline violation of the duties and working at your own will.

Article-II

That No.913441158 Constable Randhir Singh C.I.S.F. Unit C.H.E.P. Stage-II Karian, District Chamba (HP) on 26.2.2003 at about 0700, by deceiving Head Constable Chand Ram, marked his duty in the duty deployment register in his own hand writing from 24.2.2003 to 26.2.2003 and put his signatures whereas he did not attend the duty during the period which act amounts to tampering with Government documents and grave indiscipline.

Article-III

That No.913441158 Constable Randhir Singh C.I.S.F. Unit, C.H.E.P. Stage-II, Karian District Chamba (HP) on 27.2.2003 at about 1810 hours, near duty post of G.M. Bungalow misbehaved and called names to Inspector

Bhagwan Singh of this unit which act of his amounts to misbehaviour with senior, misconduct and insubordination.

Article-IV

That after checking the previous service record of No.913441158 Constable Randhir Singh C.I.S.F. Unit, C.H.E.P. Stage-II, Karian, District Chamba (HP) it is clear that he is in the habit of misbehaving and commits acts of misconduct which shows that he has not improved his conduct."

After due compliance of all the codal formalities as also the principles of natural justice, the Inquiry Officer submitted its report dated 22nd May, 2003 holding that the charges stand proved against the petitioner on all counts. A copy of said inquiry report was supplied to the petitioner.

During the course of inquiry, 9 witnesses were examined. Based on the examination, the inquiry officer culled out certain admitted and disputed facts which are reproduced as under:-

"Admitted Facts:

The following facts which were admitted from both (Prosecution and delinquent) sides:-

1. No.91341158 Constable Randhir Singh was detailed for duty at Main Barrier of CHP Chamera, Stage-II from first shift (0600 hours to 1800 hours) on 24.2.03.

2. No. 913441158 Constable Randhir Singh did not attend to any duty place from 24.2.03 to 27.2.03.
3. The charge levelled in charge No.2 that from 24.2.03 to 26.2.03 he (No.913441158 Constable Randhir Singh) himself written his name and signed the duty deployment register whereas he has not given any duty for the above said period.
4. Charge levelled in article-IV according to which the earlier punishments awarded to No. 913441158 Constable Randhir Singh (delinquent) were given as per his conduct and he does not want to say anything about them.

THE DISPUTED FACTS:

1. No.913441158 Constable Randhir Singh was ill on 24.2.03.
2. On 25.2.03 at 0445 hours in evening he attended to Mess Meeting/Darbar and attended to regimental duties and did not do any cheating.
3. That on 27.2.03 at 1810 hours in evening he (Constable Randhir Singh) did not go near the G.M. Bungalow post."

With regard to undisputed facts the inquiry officer after examining the entire material on record returned its finding.

Based on the said report, the disciplinary authority by a reasoned order accepted the findings of the inquiry officer and awarded punishment of "dismissed from service" under Rule 34(i) of Central

Industrial Security Force Rules, 2001. Perusal of the dismissal order shows that petitioner had been supplied with the inquiry report and that the reply submitted by him was also considered before passing of the said order. The disciplinary authority has objectively considered and assessed the entire evidence/material on record and has recorded its own reasons.

Petitioner thereafter preferred an appeal, which was duly considered by the appellate authority and after examining the entire material on record the appellate authority, by a speaking order dismissed the same vide orders dated 31st March, 2004. The plea with regard to punishment being disproportionate was also considered and rejected on the ground that assaulting a senior officer and signing on a duty deployment register without detailement for duty is a case of gross insubordination and indiscipline. He held that the inquiry had been conducted as per procedure and by affording reasonable opportunities to the petitioner. The appellate authority also considered the plea of the petitioner to the effect that in view of his acquittal in Criminal Case, Charge No.III be dropped. The Chief Judicial Magistrate, Chamba, in Criminal Case No. 108-17 of 2003 in case titled as State of HP v. Randhir Singh, (decided on 1st April, 2003), acquitted the

petitioner of charges under Sections 332, 353 and 506, IPC. The Criminal case was initiated on the same cause of action/ facts which pertain to Charge-II of the Articles of Charges. The appellate authority considered this aspect also.

Petitioner preferred a revision petition, which was also rejected vide well reasoned and speaking orders dated 29th September, 2004. Learned counsel for the petitioner argued that in view of petitioner's acquittal in the criminal case Charge No.III ought to have been decided in favour of the petitioner and based on the misconduct with regard to Charges No. I and II, penalty imposed is highly disproportionate, therefore, this Court should interfere. He also argued that petitioner was not given another opportunity to show cause before inflicting penalty.

It is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. (**State of A.P. vs. S.Sree Rama Rao**, reported in AIR 1963 SC 1723).

It is also settled law that this Court would not reverse a finding of the inquiring authority on

the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. As long as there is some legal evidence to substantiate the finding, the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

As far as acquittal of the appellant by a criminal court is concerned, in my opinion, the said order does not preclude the respondent from taking disciplinary action if it is otherwise permissible. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules

of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the delinquent official by the High Court, therefore, does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the respondent.

In the departmental proceedings, the question is whether the delinquent official is guilty of such conduct as would necessitate his removal from service or lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him are established and if established what sentence should be imposed upon him.

The Apex Court in **Noida Entrepreneurs Assn. vs. Noida**, (writ petition (civil) 150 of 1997 with W.P. (C) No. 529 of 1998), has recently held as under:-

"The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiently of public service. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position."

This has been the constant position as is evident from the decisions in **Ajit Kumar Nag. Vs.**

General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others, reported in (2005) 7 SCC 764 and **Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya and others**, (1997) 2 SCC 699.

Further in **Chairman and Managing Director, United Commercial Bank and others vs. P.C.Kakkar**, reported in (2003) 4 SCC 364, it has been held as under:-

"12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

"15. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law..."

On the issue of punishment being disproportionate to the offence alleged to have been

committed by the petitioner, the ratio of law laid down of the apex Court in **State of UP vs. Sheo Shanker Lal Srivastava and others**, reported in (2006) 3 SCC 276, is reproduced hereinbelow:-

"22. It is now well settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

The contention with regard to show cause before inflicting penalty is also unacceptable in view of provisions of Article 311(2) of the Constitution of India and the Rules of service governing the petitioner wherein there is specific bar that no show cause is to be given prior to inflicting of penalty as also the decision of the Apex Court in The Secretary, Central Board of Excise and Customs and others vs. K.S.Mahalingam, reported in AIR 1987 SC 1919.

I see no reason to interfere with the well reasoned orders passed by the Authorities below based on adequate material, cogent and reliable evidence. Petitioner during the course of inquiry has admitted to have incorporated his name in the duty deployment

register showing himself on duty with effect from 24th February, 2003 to 26th February, 2003. The charges against the petitioner stand proved. Admittedly, there is no infraction of principles of natural justice. Adequate opportunities have been given to the petitioner at all times before all the authorities. He has been supplied with a copy of inquiry report. No infirmity, shocking the conscience of this Court, has been brought to my notice in the findings recorded by the inquiry officer.

No other point was urged by the learned counsel for the parties.

In view of the aforesaid observations, the writ petition is dismissed.

16th May, 2007
(C)

(Sanjay Karol),
Judge